



February 13, 2009

HOUSE BILL No. 1213

DIGEST OF HB 1213 (Updated February 11, 2009 11:03 am - DI 14)

Citations Affected: IC 7.1-5; IC 12-7; IC 12-24; IC 16-18; IC 16-41.

Synopsis: Smoking ban in public places. Prohibits smoking, with certain exceptions, in: (1) public places; (2) enclosed areas of a place of employment; and (3) certain state vehicles. Requires any location that is exempt to post a sign stating that smoking is allowed on the premises. Requires the alcohol and tobacco commission to enforce the prohibition. Makes it a Class B infraction to violate the smoking prohibition and a Class A infraction if the person has three unrelated prior offenses. Allows local units of government to adopt smoking ordinances stricter than the state law prior to January 1, 2010. Allows local units to adopt ordinances covering areas not covered by state law. Repeals the current clean indoor air law that prohibits smoking in public buildings.

Effective: July 1, 2009.

Brown C, Turner, Welch

January 16, 2009, read first time and referred to Committee on Public Policy.
February 12, 2009, amended, reported — Do Pass.

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HB 1213—LS 6176/DI 77+



February 13, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1213

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 7.1-5-12 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]:

4 **Chapter 12. Prohibition on Smoking**

5 **Sec. 1. This chapter does not apply to the following:**

6 (1) A private residence, except when used as a licensed child
7 care, adult day care, or health care facility.

8 (2) A family owned and operated business in which all
9 employees are related to the owner, but only if the enclosed
10 areas of the business are not open to the public.

11 (3) The place of business of a self-employed individual in
12 which all employees are related to the self-employed
13 individual, but only if the enclosed areas of the place of
14 business are not open to the public.

15 (4) A hotel or motel room that is:

16 (A) rented to guests; and

17 (B) designated as a smoking room;

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as long as not more than twenty percent (20%) of the rooms rented to guests in the hotel or motel are designated as smoking rooms.

(5) A retail tobacco store.

(6) A vehicle used by an employee while in the service of an employer if the vehicle is occupied only by that employee.

(7) A tobacco bar.

(8) A licensed premises (as defined in IC 7.1-1-3-20) that:

(A) holds a beer, liquor, or wine retailer's permit;

(B) permits no individual to enter at any time who is less than eighteen (18) years of age;

(C) employs no individual less than eighteen (18) years of age;

(D) is not located in a business that would otherwise be subject to this chapter; and

(E) has provided notice to the local health department as part of its annual application for a retail food establishment license that:

(i) it intends to permit smoking;

(ii) it intends to serve only customers who are at least eighteen (18) years of age; and

(iii) the establishment is otherwise entitled to an exemption under this section.

(9) A business that:

(A) is exempt from federal income taxation under 26 U.S.C. 501(c);

(B) is a club (as defined in IC 7.1-3-20-1) or a fraternal club (as defined in IC 7.1-3-20-7);

(C) holds a beer, liquor, or wine retailer's permit; and

(D) provides food or alcoholic beverages only to its bona fide members and their guests.

(10) The gaming area of a person that is the holder of one (1) or more of the following:

(A) A permit to conduct horse racing under IC 4-31-5. The gaming area for a license holder for horse racing means the enclosed seating area where live racing is observed

(B) An owner's license under IC 4-33-6.

(C) A contract as an operating agent under IC 4-33-6.5.

(D) A gambling game license under IC 4-35-5.

Each premises to which this subdivision applies must provide for at least twenty percent (20%) of the gaming positions in a designated contiguous area to be smoke free.

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1 **Sec. 2.** As used in this chapter, "public place" means an enclosed
2 area in which the public is invited or permitted.

3 **Sec. 3.** As used in this chapter, "smoking" means the:

- 4 (1) carrying or holding of a lighted cigarette, cigar, pipe, or
5 any other lighted smoking equipment; or
6 (2) inhalation or exhalation of smoke from lighted smoking
7 equipment.

8 **Sec. 4. (a)** Smoking is prohibited in the following:

- 9 (1) A public place.
10 (2) Enclosed areas of a place of employment.
11 (3) A vehicle owned, leased, or operated by the state if the
12 vehicle is being used for a governmental function.

13 (b) An employer shall inform each of the employer's employees
14 and prospective employees of the smoking prohibition in the place
15 of employment.

16 (c) An owner, an operator, a manager, or other individual with
17 authority shall remove ashtrays or other smoking paraphernalia
18 from areas where smoking is prohibited under this chapter.

19 **Sec. 5.** The commission shall enforce this chapter. The
20 commission may inspect premises that are subject to this chapter
21 to ensure that the person responsible for the premises is in
22 compliance with this chapter.

23 **Sec. 6. (a)** The official in charge of a public place shall do the
24 following:

- 25 (1) Post conspicuous signs that read "Smoking Is Prohibited
26 By State Law" or other similar language.
27 (2) Request an individual who is smoking in violation of this
28 chapter to refrain from smoking.
29 (3) Remove an individual who is smoking in violation of this
30 chapter and fails to refrain from smoking after being
31 requested to do so.

32 (b) The proprietor of a restaurant shall post conspicuous signs
33 at each entrance to the restaurant, informing the public that
34 smoking is prohibited in the establishment.

35 (c) If a premises is exempt from the prohibition on smoking
36 under this chapter or a local ordinance, the proprietor must post
37 a conspicuous sign at any public entrance of the premises stating
38 that the premises is a smoking facility.

39 **Sec. 7.** A person who smokes in an area where smoking is
40 prohibited by this chapter commits prohibited smoking, a Class B
41 infraction. However, the violation is a Class A infraction if the
42 person has at least three (3) prior unrelated judgments for a

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violation of this chapter.

Sec. 8. An owner, manager, or operator of a public place or place of employment that fails to comply with this chapter commits a Class B infraction. However, the violation is a Class A infraction if the person has at least three (3) prior unrelated judgments for a violation under this chapter.

Sec. 9. (a) An ordinance of a county, city, town, or other governmental unit that restricts smoking in a public place and that is:

- (1) more restrictive than this chapter; and
 - (2) adopted before January 1, 2010;
- is not preempted by this chapter.

(b) An ordinance of a county, city, town, or other governmental unit that restricts smoking in a public place and that is:

- (1) more restrictive than this chapter; and
 - (2) adopted after December 31, 2009;
- is preempted by this chapter.

(c) This chapter does not prohibit a county, city, town, or other governmental unit from adopting an ordinance restricting smoking in places that are not defined as public places by this chapter.

SECTION 2. IC 12-7-2-178.8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 178.8. "Smoking", for purposes of IC 12-24-2-8, has the meaning set forth in ~~IC 16-41-37-3~~. **IC 7.1-5-12-2.**

SECTION 3. IC 12-24-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) Notwithstanding IC 12-27-3-3, the superintendent of a state institution has complete authority to regulate smoking (as defined in ~~IC 16-41-37-3~~) **IC 7.1-5-12-2**) within the state institution.

(b) A physician licensed under IC 25-22.5 may prescribe nicotine as is medically necessary for a resident of a state institution.

SECTION 4. IC 16-18-2-10, AS AMENDED BY P.L.101-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) "Agency", for purposes of IC 16-23.5, has the meaning set forth in IC 16-23.5-1-2.

(b) "Agency", for purposes of IC 16-40-5, has the meaning set forth in IC 16-40-5-1.

~~(c) "Agency", for purposes of IC 16-41-37, has the meaning set forth in IC 16-41-37-1.~~

SECTION 5. IC 16-41-37-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. A person who smokes

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1 (1) in a public building, except in an area designated as a smoking
2 area under section 5 of this chapter;
3 (2) in the retail area of a grocery store or drug store that is
4 designated as a nonsmoking area by the store's proprietor;
5 (3) in the dining area of a restaurant that is designated and posted
6 as the restaurant's nonsmoking area by the restaurant's proprietor;
7 or
8 (4) in a school bus during a school week or while the school bus
9 is being used for a purpose described in section 2.3(3) of this
10 chapter
11 commits a Class B infraction. However, the violation is a Class A
12 infraction if the person has at least three (3) previous unrelated
13 judgments for violating this section that are accrued within the twelve
14 (12) months immediately preceding the violation.
15 SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE
16 JULY 1, 2009]: IC 16-18-2-298; IC 16-18-2-318.1; IC 16-18-2-332;
17 IC 16-41-37-1; IC 16-41-37-2; IC 16-41-37-3; IC 16-41-37-3.1;
18 IC 16-41-37-5; IC 16-41-37-6; IC 16-41-37-7; IC 16-41-37-8.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred House Bill 1213, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between lines 4 and 5, begin a new paragraph and insert:

"Sec. 1. This chapter does not apply to the following:

- (1) A private residence, except when used as a licensed child care, adult day care, or health care facility.**
- (2) A family owned and operated business in which all employees are related to the owner, but only if the enclosed areas of the business are not open to the public.**
- (3) The place of business of a self-employed individual in which all employees are related to the self-employed individual, but only if the enclosed areas of the place of business are not open to the public.**
- (4) A hotel or motel room that is:**
 - (A) rented to guests; and**
 - (B) designated as a smoking room;****as long as not more than twenty percent (20%) of the rooms rented to guests in the hotel or motel are designated as smoking rooms.**
- (5) A retail tobacco store.**
- (6) A vehicle used by an employee while in the service of an employer if the vehicle is occupied only by that employee.**
- (7) A tobacco bar.**
- (8) A licensed premises (as defined in IC 7.1-1-3-20) that:**
 - (A) holds a beer, liquor, or wine retailer's permit;**
 - (B) permits no individual to enter at any time who is less than eighteen (18) years of age;**
 - (C) employs no individual less than eighteen (18) years of age;**
 - (D) is not located in a business that would otherwise be subject to this chapter; and**
 - (E) has provided notice to the local health department as part of its annual application for a retail food establishment license that:**
 - (i) it intends to permit smoking;**
 - (ii) it intends to serve only customers who are at least eighteen (18) years of age; and**
 - (iii) the establishment is otherwise entitled to an exemption under this section.**

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(9) A business that:

- (A) is exempt from federal income taxation under 26 U.S.C. 501(c);**
- (B) is a club (as defined in IC 7.1-3-20-1) or a fraternal club (as defined in IC 7.1-3-20-7);**
- (C) holds a beer, liquor, or wine retailer's permit; and**
- (D) provides food or alcoholic beverages only to its bona fide members and their guests.**

(10) The gaming area of a person that is the holder of one (1) or more of the following:

- (A) A permit to conduct horse racing under IC 4-31-5. The gaming area for a license holder for horse racing means the enclosed seating area where live racing is observed**
- (B) An owner's license under IC 4-33-6.**
- (C) A contract as an operating agent under IC 4-33-6.5.**
- (D) A gambling game license under IC 4-35-5.**

Each premises to which this subdivision applies must provide for at least twenty percent (20%) of the gaming positions in a designated contiguous area to be smoke free. "

Page 1, line 5, delete "1." and insert "2."

Page 1, line 7, delete "2." and insert "3."

Page 1, line 12, delete "3." and insert "4."

Page 2, line 6, delete "4." and insert "5."

Page 2, line 10, delete "5." and insert "6."

Page 2, between lines 21 and 22, begin a new paragraph and insert:

"(c) If a premises is exempt from the prohibition on smoking under this chapter or a local ordinance, the proprietor must post a conspicuous sign at any public entrance of the premises stating that the premises is a smoking facility."

Page 2, line 22, delete "6." and insert "7."

Page 2, line 27, delete "7." and insert "8."

Page 2, line 32, delete "8. This chapter does not prohibit a county, city, town, or" and insert **"9. (a) An ordinance of a county, city, town, or other governmental unit that restricts smoking in a public place and that is:**

- (1) more restrictive than this chapter; and**
- (2) adopted before January 1, 2010;**

is not preempted by this chapter.

(b) An ordinance of a county, city, town, or other governmental unit that restricts smoking in a public place and that is:

- (1) more restrictive than this chapter; and**
- (2) adopted after December 31, 2009;**

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is preempted by this chapter.

(c) This chapter does not prohibit a county, city, town, or other governmental unit from adopting an ordinance restricting smoking in places that are not defined as public places by this chapter."

Page 2, delete lines 33 through 34.

and when so amended that said bill do pass.

(Reference is to HB 1213 as introduced.)

VAN HAAFTEN, Chair

Committee Vote: yeas 7, nays 5.

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